

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERTO ARCE,

Petitioner,

- against -

ORDER

21 Civ. 346 (NRB)
S4 16 Cr. 643 (NRB)

UNITED STATES OF AMERICA,

Respondent.

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NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

WHEREAS petitioner in his petition for relief from his conviction pursuant to 28 U.S.C. § 2255 raises a claim of ineffective assistance of counsel; and

WHEREAS the Court has determined that petitioner's claim of ineffective assistance of counsel would benefit from additional factual development; and

WHEREAS, in basing his petition on ineffective assistance of counsel, petitioner has waived the attorney-client privilege as a matter of law; and

WHEREAS the Court is cognizant that, absent court order, ethical concerns may inhibit Counsel from disclosing confidential information relating to a prior client even in the absence of a privilege, see, e.g., ABA Standing Comm. on Ethics and Prof. Responsibility Formal Op. 10-456 (July, 14, 2010), Disclosure of


Information to Prosecutor When Lawyer's Former Client Brings
Ineffective Assistance of Counsel Claim; is hereby

ORDERED that petitioner's former counsel, Edgar Fankbonner, Esq. and Michael Kushner, Esq., shall give sworn testimony in the form of an affidavit by March 1, 2021 addressing the allegations of ineffective assistance of counsel made by the defendant, and provide to the Court as an attachment to the affidavit a copy of any relevant documents or written communications; and it is further

ORDERED that briefing schedule ordered on January 26, 2021 (ECF No. 4) is hereby revised to reflect that the Government's response to petitioner's motion shall be due on or before April 2, 2021, and any reply thereto is due on or before May 3, 2021.

SO ORDERED.

Dated: New York, New York
January 28, 2021



NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

A copy of the foregoing has been mailed to:

Roberto Arce Jr., ID No. 77887-054
FCI ESTILL
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 699
ESTILL, SC 29918